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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,743	09/23/2003	Bradley Robert Kenson		1775

7590 04/05/2005

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EXAMINER

STASHICK, ANTHONY D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/668,743	Applicant(s) KENSON, BRADLEY ROBERT	
	Examiner Anthony Stashick	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference number 100 in line 20 of page 11. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 contains the trademark/trade name Velcro. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fastener and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 9-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Coomes 6,442,869. Coomes '869 discloses all the limitations of the claims including the following: a sole 6 having a recessed section (see Figure 3, recessed section shown where is located); an upper portion 14 attached to at least some section of the sole (see Figure 2); the upper portion adapted to conform to at least some portion of the anatomy of the foot of an individual wearer (strap tightly fits foot); the upper portion operative to maintain the wearer's foot in proximity to the sole (upper holds sole to foot); an interchangeable plug 4 adapted to selectively fit within the recessed section of the sole (see Figure 3); a locking mechanism 16 operative to maintain the plug within the recessed section of the sole; an emblem portion of the plug (that with the smiley face) having a profile which deviates from a plane formed by the lower surface of the sole and the perimeter surface of the plug (see Figure 3); the emblem portion operative to mark surfaces with which it comes into contact (see Abstract); the locking member comprises a first mating element formed along a surface of the recessed section (holes, 18, in upper sole); a second mating element (18, holes in 4) formed along a surface of the plug; the second mating element adapted to engage in a fixed relationship with the first mating element (by 16); when the mating elements are engaged, the plug is maintained in the recess section (plug attached to sole when fastened); at least one opening 12 defined in the sole; a strap 10 attached to the plug; the strap

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extending outwardly from the plug (see Figure 3, portion 10); the strap having a dimension sized to be received by the opening (see col. 4, lines 18-24); the strap including a retaining element (hook and loop fastener); the retaining element being operative to maintain the plug within the recesses section of the sole (16 helps hold plug in sole recess); the locking member comprises a first mating element formed along a surface of the recessed section(18); a second mating element (holes in 4) formed along a surface of the plug; the second mating element adapted to engage in a fixed relationship with the first mating element (through 16); when the mating elements are engaged, the plug is maintained in the recess section (how plug is fastened to sole); at least one opening 12 defined in the sole; a strap 10 attached to the plug; the strap extending outwardly from the plug (see Figure 3); the strap having a dimension sized to be received by the opening; the strap including a retaining element (see col. 4, lines 18-24); the retaining element being operative to maintain the plug within the recessed section (plug held in by fasteners 16); the retaining element is a Velcro closure (see col. 4, lines 18-30); the opening 12 comprises at least one aperture; the opening 12 comprises at least one channel; the emblem portion is selectively attached to the sole and the profile of the emblem portion functions to accommodate a negative relief of an image (see smiley face).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coomes 6,442,869 as applied above in view of the French reference to Emanuele FR 0171697 (FR '697). Coomes '869 discloses all the limitations of the claims except for the first mating element being a channel and the second mating element being a ridge. FR '697 teaches that a plug placed within the recess in the bottom of a sole can mating portions that are ridges and channels (see Figure 16, known in the art as "dovetail" connection) to help hold the plug in the recess during the use of the shoe. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to attach the plug of Coomes '869 to the sole by the ridges and channels taught by FR '697 to allow for ease of removal and attachment of the plug so that the plug would not pull off during use.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coomes 6,442,869 as applied above in view of Official Notice. Coomes '869 discloses all the limitations of the claims except for the retaining element being a buckle. Official Notice is taken that buckles, buttons zippers are all art accepted equivalent fasteners of Velcro or hook and loop fasteners. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to use buckles as retainers for holding the strap onto the shoe.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

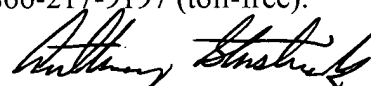
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561.

The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS